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10/044,721	01/14/2002	Paul Clifford Reid	4059/12	1575

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EXAMINER

COTTINGHAM, JOHN R

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 12/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/044,721

Applicant(s)

REID, PAUL CLIFFORD

Examiner

John R. Cottingham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,10,18,21-46 and 49-53 is/are pending in the application.
- 4a) Of the above claim(s) 1,2,10,33-46 and 51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18,21-32,49,50,52 and 53 is/are rejected.
- 7) ☒ Claim(s) 49 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The proposed drawings changes filed on 3/6/2003 are approved, the Applicant is required to send in formal drawings with the next action.

### ***Claim Objections***

2. Claim 49 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. It is drawn to the unclaimed subject matter of the lengths of material.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 18, 21-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Hubbell U.S. Patent 4,520,231. Hubbell shows all of the claimed subject matter of a sleeve in Figures 1-4.

Regarding claim 18, a fence support comprising a sleeve 2 for fitting over a support member 60 comprising at least one web 38, the web 38 comprising at least one

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means 42 to support lengths of material (col. 2, lines 57-59), the means comprising an incision 42.

Regarding claim 21, the support member is a rod 60.

Regarding claim 22, the sleeve 2 comprises at least one internal projection 20 for frictional connecting the sleeve 2 and the support member 60.

Regarding claim 23, the projection 20 is deformable (as seen in Figure 4).

Regarding claim 25, the sleeve is substantially composed of molded material (col. 4, lines 3-5).

Regarding claim 26, the support further comprising a cap 8 covering the sleeve and support member.

Regarding claim 27, the cap is waterproof (from being made of plastic).

Regarding claim 28, the cap is lockable since it is attached to the sleeve and which is held by a friction fit.

Regarding claim 29, a fence support comprising a sleeve 2 for fitting over a support member 60 comprising at least two webs 38 & 40, the webs each have at least one means 38 and 40 to support lengths of material. (col. 2, lines 57-59)

Regarding claim 30, the means to support lengths of material each comprise a slot 42 & 44.

Regarding claim 31, wherein the slots 42 & 44 are disposed at opposing angles relative to each other.

Regarding claim 32 the sleeve comprises a means for receiving a promotional 38 & 40.

Regarding claim 49, the lengths of material to be supported are electrified (col. 4, lines 3-5) This claim does not further limited the positively claimed subject matter of the independent claim.

Regarding claim 50, the sleeve 2 is made of an insulating material, as indicated by the cross hatching.

5. Claims 52-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Roy U.S. Patent 6,330,998. Roy shows all of the claimed subject matter of a support structure in Figures 1-26.

Regarding claim 52, a support structure for an electrified fence (the wire is capable of being electrified) which comprises a sleeve 100 that receives and substantially surrounding the entire exposed surface of a post 45 which extends vertically from the underlying surface at the side of the electrified fence, the interior of the sleeve comprises friction means 142 for frictionally and forceably receiving the post 60, the sleeve including an exterior web 120 which is disposed parallel to the post when the sleeve is installed over the post 45, the web 120 has an opening for receiving an electrified wire of the fence, the sleeve 100 is composed of a dielectric material (see abstract) at least where it receives the electrified wire, the sleeve further includes a cap 110 for covering the top of the post when the sleeve is installed over the post 45.

Regarding claim 53, the sleeve 100 is sufficiently long for fitting over substantially the entire exposed surface of the support member.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hubbell U.S. Patent 4,520,231. Hubbell does not disclose the sleeve being made of an extruded material. However, It would have been will within the level of one of ordinary skill in the art at the time the invention was made to make the sleeve of an extruded material for cheaper construction costs. The selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

***Response to Arguments***

8. Applicant's arguments filed 3/6/2003 have been fully considered but they are not persuasive. The Applicant is first argueing more than what is being claimed, by arguing the cap in Hubbel is integral, however, the applicant has not made the distinctinon over the prior art in the claims.

In regards to the arguments directed to claim 24, whether the sleeve is made by extrusion is irrelevant in product claims, because in product by process claims, the process is not given patentable weight.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John R. Cottingham whose telephone number is (703) 306-3439. The examiner can normally be reached on Monday - Thursday, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H. Browne can be reached on (703) 308-1159. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.

A handwritten signature in black ink, appearing to read 'John R. Cottingham', with a large, stylized flourish extending to the right.

John R. Cottingham  
Primary Examiner  
Art Unit 3679

jrc